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In the Supreme Court of the United States

OCTOBER TERM, 1987

CHULA VISTA CITY SCHOOL DISTRICT, ET AL.,
PETITIONERS

v.

WILLIAM J. BENNETT, SECRETARY OF EDUCATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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11 pp

TABLE OF AUTHORITIES

	Page
Case:	
Blum v. *Bacon*, 457 U.S. 132 (1982)	8
Statutes and regulation:	
Administrative Procedure Act, 5 U.S.C. 553(a)(2)	3
Educational Agencies Financial Aid Act, 20 U.S.C. (& Supp. III) 236 *et seq.*	1
General Education Provisions Act, 20 U.S.C. (& Supp. III) 1221 *et seq.*:	
20 U.S.C. (& Supp. III) 1221-1234c	3
20 U.S.C. 1232(c)	4, 6
Tucker Act:	
28 U.S.C. 1346(a)(2)	3
28 U.S.C. 1491	3
34 C.F.R. 222.30 *et seq.*	9
Miscellaneous:	
49 Fed. Reg. 31628 (1984)	9
50 Fed. Reg. 33209 (1985)	9

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Petitioners challenge the validity of a benchmark used by the federal government for the last 30 years in calculating awards of Impact Aid under the Educational Agencies Financial Aid Act, 20 U.S.C. (& Supp. III) 236 *et seq.*, to school districts that educate "federally-connected" children—children whose parents reside on or are employed on federal land which, because of its federal status, is exempt from local property taxation.

1. a. Pursuant to the Educational Agencies Financial Aid Act, a local educational agency (LEA) may apply to the Secretary of Education for annual "Impact Aid" payments if the LEA provides free public education to a certain number of federally-connected children.[1] The amount of assistance is based upon a comparison of expenditures between the federally-impacted LEA and other

[1] The Secretary of Education has administered the Impact Aid program since the Department of Education was created in 1980. The Department's predecessor agencies administered the program prior to that time. We refer throughout to the authority administering the program as the Secretary.

"generally comparable" school districts in the state. From the early 1950's until recently, comparability determinations have included the so-called "$50 Rule." Under the $50 Rule, a group of school districts was deemed *not* to be comparable with an applicant LEA if their average per-pupil local contribution to education was more than $50 higher than the applicant district's contribution per *non*federally-connected child. In effect, the rule allocated for each federally-connected child approximately the same amount (within $50) that a district raised locally for its nonfederally-connected children. In fiscal years 1978 and 1979, the Secretary also used a "grid" of 14 criteria in determining whether districts were generally comparable; under the grid method, a district was considered generally comparable if it was similar in at least five of the 14 criteria with the applicant LEA. In fiscal year 1978, the grid was used in conjunction with the $50 Rule; at the outset of fiscal year 1979, the grid alone was used. Pet. App. A6-A7.

Petitioners are 55 LEAs in California that filed Impact Aid applications for fiscal year 1979. Generally, petitioners initially requested, and were paid, only the statutory minimum amount of aid. Later that year petitioners learned that the Department of Education had decided to determine comparability solely by the grid, without reference to the $50 Rule. Accordingly, they submitted amended applications, now claiming that they were "generally comparable" to LEAs having some of the highest local contribution levels in the State. For example, class representative Chula Vista, with a per student contribution of $467, contended that it was "generally comparable" to districts that averaged $1,473 per student (Pet. App. A7-A8).[2] The Secretary then reinstated the $50 Rule and denied the amended applications.

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[2] See 762 F.2d 762, 764 (9th Cir. 1985), vacated on jurisdictional grounds, 474 U.S. 1098 (1986).

Petitioners brought this action in the United States District Court for the Southern District of California, challenging the validity of the $50 Rule and seeking an injunction requiring the Secretary to pay them Impact Aid in accordance with the local contribution rates they had selected in their amended applications. The district court held that the $50 Rule was invalid because it acted as an unauthorized cap on benefits. Pet. App. E1-E22. The district court remanded the matter to the Department of Education with directions to process petitioners' amended applications in accordance with the grid (*id.* at E3-E4).[3]

b. On appeal, the Ninth Circuit reversed (762 F.2d 762, 769 (1985), vacated on jurisdictional grounds, 474 U.S. 1098 (1986)).[4] The court of appeals held that the $50 Rule was valid because it was consistent with the language of the statute and with "the bulk of the legislative history" (*id.* at 766, 768), and also because of the deference ac-

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[3] The district court did not, however, accept all of petitioners' arguments. It found no merit to petitioners' claim that the $50 Rule was invalid because it was not published pursuant to the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2), or the General Education Provisions Act (GEPA), 20 U.S.C. (& Supp. III) 1221-1234c. In addition, the court concluded that estoppel did not preclude the government from using the $50 Rule.

[4] Before reaching the merits, the Ninth Circuit determined that only six of the 55 plaintiff LEAs had presented questions within the jurisdiction of the district court. Although the suit ostensibly sought equitable relief, the court of appeals found that its object was actually a money judgment – additional Impact Aid payments. Accordingly, under the Tucker Act (28 U.S.C. 1346(a)(2), 1491), the district court had jurisdiction only over the claims of LEAs seeking $10,000 or less; all the other claims should have been brought in the Claims Court. The 49 claims that exceeded $10,000 were dismissed for lack of jurisdiction, while the rest were rejected on the merits. 762 F.2d at 764-765.

corded a rule that was contemporaneous with the implementation of the Impact Aid law and had been in effect for 30 years (*id.* at 766).[5]

Petitioners then sought a writ of certiorari. This Court granted the petition and, without ruling on the merits, vacated the Ninth Circuit's judgment and remanded the case "to the Court of Appeals [for the Ninth Circuit] to transfer the case pursuant to 28 U.S.C. § 1631 to the United States Court of Appeals for the Federal Circuit. See 28 U.S.C. § 1295(a)(2)." 474 U.S. 1098 (1986).

c. After the remand and transfer, the Federal Circuit, in an opinion very similar in substance to that of the Ninth Circuit, again reversed the district court's judgment (Pet. App. A1-A26).[6] After noting that it was "undisputed that the $50 Rule does not conflict with the express language of the Impact Aid statute" (*id.* at A14), the court of appeals rejected the district court's argument based on the legislative history (*id.* at A14-A18). The district court had read the legislative history as disfavoring definitions of comparability relying solely on one factor (see *id.* at A15-A17); the court of appeals, however, found that local effort, which the $50 Rule measures, "includes several of

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[5] The Ninth Circuit also agreed with the district court that the notice and comment procedures of the APA and the GEPA were not applicable to the $50 Rule (762 F.2d at 768), and further found that the Secretary had not violated the geographic uniformity requirement of the GEPA, 20 U.S.C. 1232(c) (762 F. 2d at 768). Finally, the court of appeals rejected petitioners' estoppel argument, emphasizing that even if estoppel could ever run against the government, petitioners had not alleged detrimental reliance and so would not be entitled to estoppel against a private party (*id.* at 769).

[6] Like the Ninth Circuit (see note, 4 *supra*), the Federal Circuit found that only six of the LEAs presented claims that were within the district court's jurisdiction under the Tucker Act and remanded the other 49 claims to the district court "to be dismissed for lack of jurisdiction" (Pet. App. A12).

the factors which Congress stated should be considered" (*id.* at A16), and moreover that "even if local contribution is viewed as a single factor * * * [t]he fact that Congress set out certain factors for consideration does not prohibit the Secretary from concluding that some are more important than others. It was not beyond the Secretary's authority to determine that one factor, local contribution, was so critical that, unless it was met, there could be no finding of comparability" (*ibid.*). Having found that the $50 Rule, in keeping with the purpose of the Impact Aid program, "measures the willingness of the LEA to tax itself in order to educate its children" (*id.* at A18), the court of appeals concluded that the $50 Rule was "a reasonable interpretation of the statute" (*ibid.*).

The Federal Circuit also rejected petitioners' argument that "the reinstatement of the $50 Rule only with respect to the class members, all of whom are located in California, violated 20 U.S.C. § 1232(c)" (Pet. App. A20), which requires that the Secretary's regulations "shall be uniformly applied and enforced throughout the fifty States." The court of appeals concluded that petitioners had "not shown that California districts as a group were treated differently from the districts in the [19] other states using [the method of computation applicable in California]" (*id.* at A21).[7]

Judge Davis dissented from the majority's determination that the $50 Rule was valid, finding it improper "in the light of the controlling legislative history" (Pet. App.

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[7] Like the Ninth Circuit and the district court, the Federal Circuit rejected petitioners' objection based on the notice and comment provisions of the APA and the GEPA (Pet. App. A18-A20), along with their estoppel claim, finding again that, even if estoppel ever could run against the government, petitioners had not proven detrimental reliance as required under the traditional elements of an estoppel against a private party (*id.* at A22).

A24) and "not * * * consistently followed by the administrative agency" (*ibid.*). Judge Davis agreed with the majority on the other questions in the case (*ibid.*).

2. The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. No further review is warranted.

a. Petitioners appear to argue, first, that application of the $50 Rule to them violated the requirement of 20 U.S.C. 1232(c) that the Secretary's regulations be applied uniformly "throughout the fifty [S]tates" (Pet. 6-8), and second, that the $50 Rule was inconsistent with the legislative history of the program (*id.* at 8-9).[8] Neither contention has merit.

In fiscal year 1979, the Secretary did not subject all applications for Impact Aid to the $50 Rule; at first, he experimented with using the grid alone, but then abandoned the grid "when it became clear that it was not a good evaluation tool" (Pet. App. A21). Petitioners claim that this violated Section 1232(c). This argument misses the point of that provision, which forbids "geographic nonuniformity" (Pet. App. A20)—different treatment of LEAs because they are in different states. As the Federal Circuit explained, the Secretary did not apply one rule in California and another rule elsewhere; several of the LEAs whose initial applications were approved on the basis of the grid alone were in California (*ibid.*).

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[8] In this Court, petitioners do not challenge the Federal Circuit's finding that the district court had jurisdiction over only six of the 55 claims and do not seek review of that court's remand of the other 49 claims to the district court with instructions to dismiss for lack of jurisdiction (see note 6, *supra*). Accordingly, the petition presents the money claims of only six LEAs, claims that total less than $40,000 (see Pet. App. A12 n.16). In addition, petitioners do not challenge the court of appeals' rulings with respect to compliance with notice and comment procedures (*id.* at A18-A20) and estoppel (*id.* at A21-A22).

Petitioners also suggest (Pet. 6-7) that application of the $50 Rule to their amended requests was irrationally inconsistent with the treatment accorded applications filed earlier in fiscal year 1979 and therefore should not have been accorded deference (*id.* at 7). It is true that the Secretary's method of determining comparability changed during fiscal year 1979. The Secretary at the outset experimented with using only the grid, but returned to use of the $50 Rule when it became clear that the grid would not screen out unreasonably large requests based on unrealistic claims of comparability.[9] But this does not mean that the Secretary's decisions were irrational or "ad hoc." The change was not pointless or arbitrary; rather, the Secretary, having briefly experimented with awarding Impact Aid without reference to the $50 benchmark, decided to return to the standard that had prevailed for three decades rather than accede to petitioners' inflated requests.[10] The court of appeals properly deferred to the

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[9] As the Federal Circuit noted, five petitioners had their initial applications granted under the grid and then filed amended requests, seeking more Impact Aid. "In their original applications, the amount by which their requests exceeded their local effort ranged from $53 to $138; in their amended applications, this difference ranged from $496 to $1,150." Pet. App. A20 n.30.

[10] Petitioners complain that "[t]he Secretary's employment of an innovative experiment in determining eligibility for funds during Fiscal Year 1979 falls far outside of permissible parameters for the valid exercise of agency discretion" (Pet. 7). If that is correct, petitioners' claim must fail. The "innovative experiment" in fiscal year 1979 was use of the grid, not use of the long-standing $50 Rule. Petitioners, however, are not correct: agencies are allowed to innovate and experiment as long as their conduct is purposeful, rational and in accordance with law, as the Secretary's was. As the Federal Circuit realized, "[i]f the Secretary feared that the department would be forced to continue to use new methods after it was determined that they were ineffective, he would be much less inclined to experiment with new ideas" (Pet. App. A21).

agency's decision. See, *e.g.*, *Blum* v. *Bacon*, 457 U.S. 132, 141 (1982).

b. Petitioners also contend (Pet. 8-9) that the $50 Rule was invalid ab initio because it conflicted with the statute. This argument is not based directly on the statute, which is silent on the definition of comparability. Instead, petitioners rely (*ibid.*) on a passage from the legislative history, which suggests that the education expenditures of a federally-impacted LEA are not necessarily a reliable guide to the LEA's expenditure effort, because they reflect in part a tax base reduced by the presence of exempt property; the passage goes on to say that other factors bear on the cost of educating federal children (see Pet. App. A14-A15). As the Federal Circuit recognized, however, this passage does not cast doubt on the $50 Rule. The rule did *not* ignore an applicant LEA's reduced tax base, but rather adjusted for it (and thus for the additional burden imposed by federally-connected children) by focusing on expenditure per *non*federal child; it thus "eliminate[d] the distortion of local revenues caused by the federal presence" (*id.* at A18). Nor did the $50 Rule define comparability on the basis of one factor. Local effort, on which the rule was based, itself "includes several of the factors which Congress stated should be considered" (*id.* at A16).

After canvassing the legislative history, the Federal Circuit correctly determined that "the $50 rule [was] not inconsistent with the legislative history" (Pet. App. A18) and that the single passage relied on by petitioners and the district court was "ambiguous at best" (*id.* at A17). Rather, the $50 Rule, which "further[ed] the purpose of the act by focusing on the actual amount spent by the LEA per non-federal child" was "a reasonable interpretation of the statute" (*id.* at A18).

c. Finally, this case warrants no further review because the underlying legal issue has no ongoing signifi-

cance. The Secretary has replaced the procedures at issue in this case with new regulations not containing the $50 Rule.[11] Present and future Impact Aid awards will be made under those regulations, not the $50 Rule.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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[11] See 49 Fed. Reg. 31628 (1984); 50 Fed. Reg. 33209 (1985). The applicable regulations are now codified at 34 C.F.R. 222.30 *et seq.*

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